U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 MASS, 3/F
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Washington, D.C. 20536

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

File: LOS 214F 0611 Office: LOS ANGELES, CALIFORNIA Date:

IN RE: Petitioner: [redacted]

Petition: Petition for Approval of School for Attendance by Nonimmigrant Students under Section 101(a)(15)(F)(i) of the Immigration and Nationality Act, 8 U.S.C.§ 1101(a)(15)(F)(i)

OCT 30 2003

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

PUBLIC COPY

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Petition for Approval of School for Attendance by Nonimmigrant Students (Form I-17) was denied by the District Director, Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The district director's decision will be withdrawn and the case will be remanded to him for entry of a new decision.

The record reflects that the petitioner in this matter, [redacted] previously applied for approval for attendance by nonimmigrant students and was denied. The Form I-17 at issue in this proceeding is the Student and Exchange Visitor Information System (SEVIS) petition filed in accordance with 8 C.F.R. § 214.3(a)(1)(i). The Form I-17 indicates that the petitioner is a public school established in 1926.[1] The school offers diplomas in Biblical and Ministerial studies and declares an enrollment of approximately 125 students per year, with 30 teachers.

After an on-site inspection by a CIS contractor, the district director denied the petition, finding that the petitioner failed to establish that it was licensed, approved or accredited. The district director further determined that the petitioner had failed to submit evidence including a current list of classes and a current catalogue. Finally, the director found that the petitioner had failed to establish that its credits have been and are unconditionally accepted by at least three accredited institutions.

The petitioner submits a timely appeal with supporting evidence. The supporting evidence consists of a copy of the petitioner's courses, as well as information related to its exempt status under the California Bureau for Private Postsecondary and Vocational Education (BPPVE).

Pursuant to 8 C.F.R. § 103.2(b)(8), where there is no evidence of ineligibility, and initial evidence or eligibility information is missing, or CIS finds that the evidence submitted either does not fully establish eligibility for the requested benefit or raises underlying questions regarding eligibility, CIS shall request the missing initial evidence, and may request additional evidence. We do not find that the district director made any such request for evidence prior to denying the petitioner's Form I-17.

In most instances, where the district director failed to request evidence prior to denial, as the decision has already been rendered, the most expedient remedy is the full consideration on appeal of any evidence, which the petitioner would have submitted in response to such a request. In this case, however, the district director's denial failed to adequately address the

[1] Although the petitioner's Form I-17 indicates that the petitioner is a public institution, information contained in the record establishes that the petitioner is, in fact, a private institution.

petitioner's evidentiary shortcomings and failed to accurately apply the regulatory requirements to the petitioner's case. These failures rendered it impossible for the petitioner to respond in any meaningful way on appeal or for us to make any determination as to the sufficiency of evidence. Therefore, as will be specifically discussed in the following decision, the case will be remanded to the district director for action in accordance with this decision.

8 C.F.R. § 214.3(b) states, in pertinent part:

> Any other petitioning school shall submit a certification by the appropriate licensing, approving, or accrediting official who shall certify that he or she is authorized to do so to the effect that it is licensed, approved, or accredited. In lieu of such certification a school which offers courses recognized by a State-approving agency as appropriate for study for veterans under the provisions of 38 U.S.C. 3675 and 3676 may submit a statement of recognition signed by the appropriate official of the State approving agency who shall certify that he or she is authorized to do so…
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> * * * *
>
> A school catalogue, if one is issued, shall be submitted with each petition. If not included in the catalogue, or if a catalogue is not issued, the school shall furnish a written statement containing information concerning the size of its physical plant, nature of its facilities for study and training, educational, vocational or professional qualifications of the teach staff, salaries of the teachers, attendance and scholastic grading policy, amount and character of supervisory and consultative services available to students and trainees . . . .

The first reason given by the district director for denying the petitioner's Form I-17 was that the petitioner "failed to submit evidence of current course approval from the State of California Bureau for Private Postsecondary and Vocational Education [BPPVE]." On appeal, the petitioner has submitted evidence from BPPVE that petitioner has been granted an exemption based on its religious status. Such evidence overcomes the finding of the district director as it establishes that the petitioner is licensed/and or approved by the appropriate official and, therefore, meets the requirements 8 C.F.R. §214.3(b).

The next reason for the denial, as stated by the district director, is that the petitioner failed to provide a current list of classes and current catalogue. We agree with the district director that as the petitioner is a private school and has not shown evidence that it is accredited by a nationally recognized accrediting body, in

accordance with 8 C.F.R. §214.3(b), the petitioner was required to submit a catalogue or a written statement with the information listed in the regulation. We note that although the record contains copies of the petitioner's schedule of courses for the fall of 2002, it does not contain a copy of the petitioner's catalogue or any written statement as required by regulation.

On appeal, the petitioner submits a list of list of courses but does not provide any date to determine if the courses are current. The evidence submitted on appeal does not include any catalogue or statements with pertinent information related to finances, facilities, or teachers. In most instances, despite the fact that the district director did not afford the petitioner an opportunity to respond prior to denial, we would expect the petitioner to submit such evidence on appeal, considering that the denial specifically noted the lack of information related to both the current list of classes, as well as a current catalogue. In this case, however, as the case must be remanded to the district director for other errors, the most fair and expedient way to remedy this missing information is on remand.

On remand, the district director should specifically request the information cited in 8 C.F.R. § 214.3 (b) related to the size of school's physical plant, nature of facilities for study and training, the educational, vocational and professional qualifications of the teaching staff, salaries, attendance and grading policies, and the amount and character of supervisory and consultative services available to students. The district director should also request a certified copy of an accountant's last statement of the school's net worth, income, and expenses.

The final reason given by the district director in his denial was the petitioner's failure to submit evidence as required by 8 C.F.R. § 214.3(c). Specifically, the district director determined that the petitioner failed to submit evidence of accreditation and that the petitioner failed to provide three letters from accredited institutions indicating their unconditional acceptance of the petitioner's credits.

8 C.F.R. § 214.3(c) states, in pertinent part:

> If the petitioner is an institution of higher education and is not [a public school or a school accredited by a nationally recognized accrediting body], it must submit evidence that it confers upon its graduates recognized bachelor, master, doctor, professional, or divinity degrees, or if it does not confer such degrees, that its credits have been and are accepted unconditionally by at least three such institutions of higher learning.

The record reflects that the petitioner is an institution of higher education and is neither a public institution nor an accredited institution. The director's decision implies that in

order for a degree to be recognized, the petitioner must be accredited by a nationally recognized accrediting agency. We do not agree with this reasoning. For the district director to interpret "recognized degrees" to mean "degrees from an accredited institution" would render the reference to " a school accredited by a nationally recognized accrediting body" in 8 C.F.R. §214.3(b)(2) meaningless. The clause cited above, related to institutions of higher education, is grounded in the premise that the petitioning institution is neither public nor accredited. To interpret "recognized" as "accredited" would effectively write this section of the regulation out of existence.

Notwithstanding the fact that we find the district director's reasoning to be in error, we do not find that the petitioner confers "recognized degrees". The petitioner's Form I-17 indicates that the petitioner offers diplomas upon completion of the courses of study for which the petitioner seeks approval. Although the petitioner's website[2] indicates that the petitioner also offers a bachelor's degree in Theological Studies, the petitioner's Form I-17 does not indicate that the petitioner seeks approval for this particular program.[3] As such, this decision pertains only to the approval of the petitioner's diploma courses. Diplomas are not considered to be bachelor, master, doctor, professional, or divinity degrees as indicated in the regulation.

Moreover, we do not find that any of the petitioner's courses of study are "recognized." Although we determined earlier in this decision that the petitioner appropriately operates within the laws of California, an authorization to operate by the BPPVE does not necessarily mean that the school's programs or courses have also been approved. While we would normally consider approval or registration with the BPPVE to establish the fact that the petitioner's course of study is recognized, this case is different in that the petitioner is a religious organization, and is exempt from requirements that other non-religious, postsecondary schools must fulfill. The result of such exemption is stated in the August 24, 2002, letter from the BPPVE submitted on appeal. The letter states:

> Listing of these courses of study shall not be interpreted to mean, and it shall be unlawful for any institution to express or imply or represent by any means whatsoever, that the State of California or the Bureau for Private Postsecondary and Vocational Education (Bureau) has made any evaluation, recognition, accreditation, approval, or endorsement of any course of study or degree. The institution may state or advertise that it is not a private postsecondary education

[2] http://colleges.ag.org/college_guide/labi_ca.cfm (10/16/03)

[3] It should also be noted that the exemption certificate from the BPPVE does not include the petitioner's bachelor's degree program.

institution as that term is defined in law.

This statement is clear in that although the petitioner is authorized to operate within the state of California, the state did not make any determinations as to the standards of the petitioner's courses or degrees, nor does it recognize the petitioner's courses of study.

As the petitioner is a non-accredited, private school that does not confer recognized degrees, the petitioner was required to submit evidence its credits have been and are accepted unconditionally by at least three such institutions of higher learning. Although the district director did properly include this issue in his decision, he did not afford the petitioner an opportunity to submit such letters prior to the issuance of the denial. On remand, the petitioner should be afforded the opportunity to present at least three letters from accredited institutions of higher learning, that those institutions have unconditionally accepted the petitioner's credits.

On appeal, the petitioner has demonstrated that it meets the requirements of 8 C.F.R. § 214.3(b). The remaining issues to be determined on remand is whether the petitioner has the necessary facilities, personnel, and finances to conduct instruction, and whether the petitioner's credits have been and are unconditionally accepted by at least three institutions of higher learning.

This case shall be remanded to the district director to issue a request for evidence from the petitioning school as outlined above. After receipt and consideration of the additional evidence, the district director shall enter a new decision.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The district director's decision is withdrawn. The case is remanded to the district director for action consistent with the above discussion and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.